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No. 81-2386

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

PHILIP DEL COSTELLO,
Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, *et al.*,
Respondents.

On Writ of Certiorari To The United States Court of Appeals for the Fourth Circuit

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MOTION OF TEAMSTERS FOR A DEMOCRATIC UNION FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF, AND BRIEF IN SUPPORT OF PETITIONER

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MOTION OF TEAMSTERS FOR A DEMOCRATIC UNION FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

Teamsters For A Democratic Union ("TDU") respectfully moves this Court, pursuant to Rule 36.3, for leave to file a brief as *amicus curiae* in support of the petitioner. Although the petitioner granted his consent to the filing of this brief, both respondents withheld their consent. In support of this motion, TDU states:

1. TDU is a voluntary, unincorporated association of thousands of rank-and-file Teamster members seeking to reform and democratize their union, and in so doing, to make it more reponsive to their needs. Most

TDU members are covered by collective bargaining agreements, similar to the one in this case, which provide for the submission of their grievances to committees comprised of an equal number of union and employer representatives. Accordingly, the Court's disposition of this case will likely affect their rights under their labor agreements. Indeed, it will determine whether there will exist a meaningful "bulwark to prevent arbitrary [Teamster] union conduct against individuals stripped of traditional forms of redress by the provisions of federal labor policy." *Vaca v. Sipes*, 386 U.S. 171, 182 (1967).

2. Members of TDU and its predecessor organization, PROD, have an intimate familiarity with the structure and operation of the Teamster joint grievance committee process. In its brief, TDU will show how that process differs from the traditional grievance-arbitral process incorporated in most non-Teamster labor agreements. As in *Hines v. Anchor Motor Freight*, 424 U.S. 554 (1976), and *United Parcel Service v. Mitchell*, 451 U.S. 56 (1981), which involved the same joint committee grievance process, the petitioner in this case is proceeding on the assumption that joint committees are legally equivalent to arbitrators and will not, therefore, present this Court with any analysis of the differences between the joint committee and arbitral models.

3. TDU will demonstrate how a joint committee decision, like the one in this case, to "deny" an employee's grievance is not the equivalent of an arbitral decision and why, therefore, it was error for the court to apply, pursuant to *Mitchell*, the Maryland statute of limitations for suits to vacate decisions by impartial arbitrators.

4. TDU will also demonstrate why the six-month statute of limitations in section 10(b) of the National Labor Relations Act is inappropriate in a "hybrid" suit by an employee against his union for breach of its duty of fair representation, and against his employer for breach of contract. Because this Court held in *Mitchell* that federal labor policy favors the rapid disposition of labor controversies, and because the 10(b) limitations period is the shortest period that would enable the petitioner to keep his action alive, none of the parties in this proceeding will present the reasons why a lengthier statute of limitations should govern such actions.

Accordingly, TDU respectfully urges this Court to grant its motion for leave to file an *amicus curiae* brief presenting relevant facts and arguments that would not otherwise be heard by the Court.

Respectfully submitted,

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BRIEF OF TEAMSTERS FOR A DEMOCRATIC UNION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

INTRODUCTION

Through the years, this Court has molded a body of law to guide the judiciary in handling suits arising under collective bargaining agreements. In particular, it has sought to promote industrial stability by encouraging private dispute-settlement as a substitute for economic warfare. *See, e.g., Teamsters Local 174 v. Lucas Flower Co.*, 369 U.S. 95, 105 (1962); *United Steelworkers of America v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 585 (1960). Accordingly, the Court has held that judges should ordinarily defer to arbitral

decisions since "plenary review by a court of the merits [of a grievance] would make meaningless the [contract] provisions that the arbitrator's decision is final, for in reality it would almost never be final." *United Steelworkers v. Enterprise Wheel and Car Corp.*, 363 U.S. 593, 599 (1968).

At the same time, in section 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a), Congress has directed the federal courts to hear suits arising under collective bargaining agreements. Frequently, such section 301 suits are brought by one of the two parties to the agreement, i.e., the union or the employer, against the other for breach of contract. In addition, the Court has recognized that section 301 was also designed to encompass suits by individual employees "seeking to vindicate 'uniquely personal' rights . . . such as wages, hours, overtime pay, and wrongful discharge" conferred by labor agreements. *See, e.g., Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 562 (1976); *Smith v. Evening News Ass'n*, 371 U.S. 195, 200 (1962). Before seeking to vindicate these rights in a federal court, however, the Court has held that employees must exhaust their contract grievance procedures. *Republic Steel v. Maddox*, 379 U.S. 650 (1965). Of course, if the courts were thereafter required to defer automatically to the results of that process, section 301 would be rendered meaningless.

Accordingly, in *Vaca v. Sipes*, 386 U.S. 171 (1967), this Court took an important step in assuring that section 301 would not be a meaningless provision for individuals who were prevented from exhausting the grievance process by their unions' failure to invoke arbitration. The Court had previously held that the

statutory conferral of authority upon unions to be the exclusive bargaining representation for all employees in a bargaining unit implied a concomitant "duty of fair representation", i.e., a duty to exercise that authority in the interests of all bargaining unit employees "without hostile discrimination, fairly, impartially and in good faith."[1] In *Vaca*, the Court integrated the fair representation doctrine into section 301 law:

> Because these contractual [grievance] remedies have been devised and are often controlled by the Union and the employer, they may well prove unsatisfactory or unworkable for the individual grievant. The problem then is to determine under what circumstances the individual employee may obtain judicial review of his breach-of-contract claim despite his failure to secure relief through the contractual remedial procedures.

Id. at 185. The Court then held that whenever the union violated its duty of fair representation by abandoning an employee's grievance short of arbitration, the employee would be entitled to a hearing in court on his breach of contract claim against his employer. Henceforth, the duty of fair representation was to serve as a "bulwark to prevent arbitrary union conduct against individuals stripped of traditional forms of redress by the provisions of federal labor law." *Id.* at 182. In *Hines v. Anchor Motor Freight, Inc., supra*, the Court subsequently extended this principle to cases where there had been a arbitral decision on the merits of a grievance, but the union had breached its

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[1] *Steele v. Louisville & Nashville R.R. Co.*, 323 U.S. 192, 204 (1944). *See also Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953); *Humphrey v. Moore*, 375 U.S. 335 (1964).

duty of fair representation in the course of presenting the employee's claim, thereby subverting the arbitral process.

What statute of limitations should govern section 301 suits has been a point in contention from the very outset since the Congress failed to provide one. In *United Auto Workers v. Hoosier Cardinal Corp.*, 383 U.S. 696 (1966), the Court declined to close this statutory gap by devising a uniform statute. Rather, it held that "the timeliness of a § 301 suit . . . is to be determined . . . by reference to the appropriate state statute of limitations." *Id.* at 704-05.

Subsequently, some courts focused their attention on the employee's claim against his employer and concluded that, as in *Hoosier Cardinal*, the statute of limitations for breach of contract should be adopted. Other courts looked to the duty of fair representation action against the union and concluded that either the statute of limitations for torts, or the statute for actions arising under statute should apply. *See The Developing Labor Law*, 1971-75 Cumulative Supplement, pp. 398-99 (1976); Fox and Sonenthal, *Section 301 And Exhaustion of Intra-Union Appeals*, 128 U. Pa. L. Rev. 989, 1000 n. 46 (1980).

In *United Parcel Service, Inc. v. Mitchell*, 451 U.S. 56 (1981), the Court ruled that where a labor arbitration has occurred, the statute of limitations for vacating arbitral decisions should govern an employee's suit under section 301 against his employer. However, the Court did not consider what statute of limitations should govern an employee's suit against his union for breach of its duty of fair representation, or his section 301 action against an

employer where his grievance had not produced an arbitral decision. As a result of the Court's holdings in *Vaca v. Sipes, supra,* and *Hines v. Anchor Motor Freight, Inc., supra,* an employee frequently, although not necessarily, pursues claims against both his union and employer in a single "hybrid" suit. The proceeding below was such a hybrid action in which the court held that Philip Del Costello's action against his union should be governed by the same statute of limitation applicable to his action against his employer, namely Maryland's 30-day statute of limitations for vacating arbitral decisions.

In this brief, Teamsters for a Democratic Union ("TDU") will demonstrate that this decision was incorrect. In the first argument, TDU will show that a suit by a Teamster to review an adverse joint labor-management committee grievance adjustment is not the equivalent of a suit to vacate an impartial arbitration decision. Rather, Teamster suits merely seek review of their union's action to abandon their grievances short of the final step in traditional contract grievance procedure — adjudication before an impartial arbitrator. Therefore, a Teamster's action should not be governed by the limitations period for suits to vacate impartial arbitral decisions. In its second argument, TDU will demonstrate why application of the abbreviated arbitral statutes of limitation to suits by workers against their unions will effectively undermine the "bulwark" against arbitrary union conduct fashioned in *Vaca.* Such actions ought to be governed either by statutes of limitation for torts, or for actions arising under statute, not by the six month limitations period in section 10(b) of the National Labor Relations Act.

I. A TEAMSTER JOINT COMMITTEE "AWARD" IS NOT THE EQUIVALENT OF AN IMPARTIAL ARBITRAL DECISION AND SHOULD NOT BE GOVERNED BY A STATUTE OF LIMITATION FOR VACATING ARBITRAL DECISIONS

Dismissal of a Teamster's grievance by a joint union-management committee is not the equivalent of disposition by an impartial arbitrator, or arbitral tribunal headed by a third, neutral party. Although joint committee "decisions" are contractually described as "final and binding," they are not the type of impartial arbitral decision contemplated by the state arbitral statutes imported into section 301 law by the Court's decision in *Mitchell*.

In fact, an adverse joint committee decision is no more, nor less, than a decision by the Teamster's own union representatives to abandon his grievance at an early step in the grievance process, short of the type of arbitration contemplated by state arbitration statutes. To understand this proposition, one must examine the structure and operation of the Teamster joint committee and compare it to the more traditional grievance-arbitration process employed by most other unions to resolve disputes arising under collective bargaining agreements.

The Teamster joint committee is comprised of an equal number of Union and employer representatives — there are no neutrals or tie-breakers. For a committee to "decide" a grievance, there must be a majority vote. Therefore, it is axiomatic that whenever an employee's grievance is "denied" by a joint committee, one or more of the union representatives on the

committee must have voted to sustain the employer conduct which precipitated the grievance. As Professor David Feller has observed:

> "A decision by a joint committee that a grievance lacks merit, which has been analogized to an arbitrator's award, is thus simply an agreement by the union that management did not violate the agreement."

Feller, *A General Theory of the Collective Bargaining Agreement*, 61 Calif. L. Rev. 663, 837 (1973).

This is not to say there is anything intrinsically improper with the joint committee process. As this Court held in *Humphrey v. Moore*, 375 U.S. 335, 349 (1964), "a union must be free to sift out wholly frivolous grievances which would only clog the grievance process." It is to say, however, that a joint committee "decision" to deny an individual Teamster's grievance is the equivalent, for example, of a decision by a Steelworker's business agent to abandon a grievance at a step short of arbitration. In both cases, exercising judgment and discretion given by law to the union representative, the union has elected not to pursue the grievance to the next step in the contract grievance procedure.

In the instant proceeding, for example, the National Automobile Transporters Agreement (herein, the "Agreement") provided in Article 7 for a four-step grievance procedure: 1) informal settlement discussions, 2) submission to the Eastern Conference Joint Grievance Committee, 3) submission to the National Joint Committee, and 4) submission to arbitration. J.A. 151-53. Mr. Del Costello's grievance was carried

only to the second step where the Teamster representatives on the Eastern Conference Joint Committee voted to deny his grievance.

Another difference between the Teamster grievance process, and that employed by most other unions is that local Teamster officials do not customarily exercise discretion in sifting out frivolous grievances before submitting them to joint committees.[2] Although they may attempt informally to resolve a grievance, absent a favorable settlement, practically every grievance is automatically submitted to a joint committee where the sifting process actually takes place. If the Teamster committee representatives believe the grievance has merit, they either negotiate a settlement with the employer representatives, or deadlock the committee. Deadlocked grievances are automatically referred to another committee in a geographically ascending hierarchy of committees. A deadlock at the National Committee level in this case would have caused Mr. Del Costello's grievance to be referred automatically to an impartial arbitrator.[3]

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[2] In 1976, The Teamster Constitution was amended to confer such discretion, for the first time. *See* Proceedings of the 21st Convention, Art XIV, Sec. 3, pp. 344 (June, 1976). However, local officials continue to submit practically every grievance to the joint committee.

[3] *See* Agreement, Art. 7, Sec. 7, which provides *inter alia:* "if any grievance or disagreement is deadlocked by the National Joint Arbitrtion Committee . . . then both the Union and the Employer *shall* submit the grievance to a Board of Arbitration consisting of three (3) members", one appointed by the union and one by the employer who together select a third, "disinterested arbitrator." J.A. 152-53 (Emphasis added.)

Some Teamster contracts do not provide for submission of grievances deadlocked at the national level to arbitrators. Rather, like the National Master Freight Agreement, these contracts provide that the parties are entitled to "all lawful economic recourse" in the event of a deadlock at

(Continued)

Therefore, given the fact that appeals to the next step in the Teamster grievance procedure are automatic, the only way the Union can abandon a grievance short of arbitration is to vote to "deny" the grievance.

Another difference between the two grievance models is that while *ex parte* contacts with arbitrators are forbidden,[4] such contacts between "interested" Teamster and employer officials and their counterparts on joint committees are the "expected norm" and have been defended as being "proper." *See Azoff, Joint Committees As An Alternative Form of Arbitration Under the NLRA*, 47 Tul. L. Rev. 325, 360-61 (1973); *Kirkland v. Arkansas-Best Freight System, Inc.*, 475 F. Supp. 180, 191 (E.D.Mo. 1979), *aff'd in relevant part*, 629 F.2d 538 (8th Cir. 1980), *cert. denied*, 450 U.S. 980 (1981). Thus, a local Teamster official may go through the motions of presenting an employee's grievance after communicating to the union committee representatives his belief that the grievance is without merit, or that it should be denied for other, totally irrelevant reasons.

However, neither Teamster representatives on joint committees, nor the committees themselves, customarily furnish grievants with any rationale for the union representative's vote to deny the grievance. These features of the prompted one defender of the joint committee grievance process to acknowledge that:

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3 (Continued)
that level. Those courts that have focused upon this feature of the grievance process have declined to accord "finality," by refusing to defer to joint committee decisions. *See Log Scalers v. Log Scaling Bureau*, 92 LRRM 3336 (D. Or. 1976); *Breish v. Ring Screw Works*, 397 Mich. 586, 248 N.W. 2d 526 (1976).

[4] *See* Rule 45, Labor Arbitration Rules, Am. Arbit. Ass'n.

> one inherent danger of the committee system is the ease with which it may be used as a tool for disciplining union members. The system is designed to maximize and exploit the opportunities for horsetrading and collusion between the employer and the union.

Azoff, *supra*, 47 Tul. L. Rev. at 336.[5] Once again, the critical factor for purposes of this proceeding is whether this Court will conclude that a denial of a Teamster's grievance by a joint committee should be treated for statute of limitations purposes as the equivalent of an impartial arbitral decision as that term was intended in *Mitchell*.

Another significant difference between the Teamster joint committee, and the traditional grievance-arbitration process, is that joint committees are not limited to hearing and resolving only those disputes arising under the contract. Rather, as in this case, the grievance procedure requires the parties to submit "any and all disputes" between the parties.[6] Although this feature of the joint committee process may be its virtue, it has prompted NLRB Board Member Howard Jenkins to observe:

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[5] *See also* Remarks of Robert Coulson, president of the Am. Arbitration Ass'n, 107 LRR 147 (June 2, 1981): "The joint grievance committee system of arbitration found in Teamster contracts is so clearly defective as an impartial mechanism that it is not surprising that we keep seeing it tested in the courts"; *I.H. Whitehouse & Sons v. Local Union 214*, 621 F.2d 294, 299 (8th Cir. 1980) (Teamster joint committee is "subject to grave abuses, including, notably, collusive secret agreements . . . as a result of which the interests of the individual employee grievants may be sacrificed . . .").

[6] *See* Agreement, Art. 7, sec. 11; J.A. 154 In contrast, an arbitrator's jurisdiction is limited to disputes arising under the contract, and arbitral decisions are legitimate only so long as they draw their essence from the contract. *United Steelworkers v. Enterprise Corp.*, *supra*, 363 U.S. at 597.

> Whatever result such a Committee of protagonists might reach, it is in part the product of economic power, adjustment with an eye on other disputes or differences between them or on their future bargaining positions, and other considerations unrelated to the merits of the particular claim before the Committee.

Terminal Transport Co., 185 NLRB 672, 675 (1970) (dissent).

Thus, the joint committee grievance process enables the Union and employers to engage in continuous negotiations to amend their agreements to meet unforeseen contingencies.[7] While desirable from the parties' viewpoint, from the individual grievant's point of view, the negotiation of his contract rights — where something must usually be relinguished to obtain a desired result — is a far cry from adjudication by an impartial arbitrator. For this additional reason, we submit that joint committee decisions to deny individual Teamster grievances are not analogous to impartial arbitral decisions covered by state arbitration statutes.

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[7] Justice Goldberg highlighted the distinction between the two grievance models in his concurring opinion in *Humphrey v. Moore*, 375 U.S. 335 (1964), where he observed that while the "labor contract is the touchstone of an arbitrator's powers," the joint committee enables the parties "to modify, amend, and supplement their original collective bargaining agreement . . . since '[t]he grievance procedure is . . . a part of the continuous collective bargaining process,' to settle grievances not falling within the scope of the contract." *Id.* at 353. Azoff has described the committee as "a mirror image of the collective bargaining relationship, . . . an institutionalized process of continual agreement, . . . an extension of the negotiating arms of the parties," Azoff, *supra*, 47 Tul. L. Rev. at 327, 347-48.

Different considerations apply, however, when an employer seeks to challenge a joint committee award. Accordingly, when an employer refused to comply with a committee award, claiming that the absence of a neutral party rendered it non-binding, this Court held in *General Drivers v. Riss & Co.*, 376 U.S. 517 (1963), that the employer could no more repudiate a contractual agreement to be bound by a joint committee decision than it could repudiate a commitment to be bound by a decision of an impartial arbitrator. As the Court subsequently explained, a joint committee award is "final and binding on the parties, just as the contract says it is." *Humphrey v. Moore*, 375 U.S. 335, 351 (1964).[8]

Although a number of courts have taken *Riss* a step further and automatically accorded all Teamster joint committee contract adjustments the same deference normally reserved for impartial arbitral decisions even when dealing with the rights of individual employees, we submit that they have erred in doing so.[9] The result has been to place this Court's "bulwark" against arbitrary union conduct beyond the reach of most Teamsters.

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[8] In *Hines v. Anchor Motor Freight, supra*, 424 U.S. at 565, the Court described a joint committee award as "a bargained for accommodation between the two parties." Although Teamster joint committee awards figured in both *Hines* and *Mitchell*, it was assumed in both cases that the awards would be accorded the same degree of finality normally accorded to decisions by impartial arbitrators. During the oral argument in *Mitchell*, Justice White did briefly question company counsel about the difference between joint committee, and arbitral, disposition of grievances. Tr. 5-6. The response was only that they both yield "final" decisions.

[9] *See, e.g., Morris v. Werner-Continental, Inc.*, 466 F.2d 1185 (6th Cir. 1972); *Harris v. Chemical Leaman Tank Lines, Inc.*, 437 F.2d 167 (5th Cir. 1971).

The simple solution to this problem would be for this Court to recognize that while Teamster joint committee settlements may be just as "final and binding" upon the signatories to Teamster agreements, as arbitration awards are upon the parties to other collective bargaining agreements, from the employee's standpoint, a "denial" of his grievance by a joint committee represents no more than a decision by his union to abandon his grievance at an intermediate step of the grievance procedure, i.e., short of arbitration. Of course, that is precisely what occurred in this case where Philip Del Costello's grievance simply was not pressed by the Teamsters Union beyond what might be described as the first step of his formal grievance procedure after informal discussions had yielded no settlement. When viewed in this light, undistorted by the respondent's claims that Mr. Del Costello's grievance was resolved by an "arbitral tribunal," it follows that the Maryland statute of limitations for vacating impartial arbitration decisions is not appropriate because no such decision was rendered. Therefore, it was error for the court below to apply the holding in *Mitchell* in this case.

II. EXTENSION OF *MITCHELL* TO SUITS BY WORKERS AGAINST THEIR UNIONS FOR BREACH OF THE DUTY OF FAIR REPRESENTATION WILL UNDERMINE THE "BULWARK" AGAINST IMPROPER UNION CONDUCT

Pursuant to *Hoosier Cardinal*, the courts that examined the employee's cause of action against his union for breach of its duty of fair representation concluded that it was analogous either to a malpractice action (i.e., a tort), or to an action for violation of rights created by statute. Accordingly, as we have

seen *supra*, p.4, the courts applied the state statute of limitations for one of these causes of action to the employee's DFR action against his union. However, after the Court's decision in *Mitchell*, a number of courts, like the one below, instead applied to DFR actions the statute of limitations for suits to vacate arbitral awards.

Whatever may be said of an employee's cause of action against his union for breach of its duty of fair representation, it simply may not be said that it is analogous to an action to vacate an arbitral decision. It is only when the employee's action against his union is pursued in the same suit as an action against his employer that it may be linked to, but not converted into, an action to vacate an arbitral decision. Of course, where the employee's grievance was not pursued to arbitration, the employee's DFR action is not even linked to an action to vacate an arbitral award; instead, it is linked to an action for breach of contract. Accordingly, we submit that it is inappropriate to apply the statute of limitations for vacating arbitral decisions to employee DRF actions against their unions whether they are linked to, or independent of any section 301 action against an employer.

If employees are to be protected by the "bulwark against arbitrary union conduct" envisioned by the Court in *Vaca*, they must be afforded an opportunity first to recognize their right to obtain judicial review of arbitrary union conduct, and then to locate and retain a lawyer. Thereafter, the lawyer must be able to investigate the facts and evaluate the employee's claims against both his union and employer and, in appropriate cases, to initiate timely legal proceedings. Although employees previously were able to pursue

their rights, the Court's decision in *Mitchell* has fundamentally altered section 301 law and threatened to close the safety valve fashioned by the Court in *Vaca*.

In most commercial arbitration cases covered by state arbitration statutes, it is not unreasonable to assume that the parties will be able to initiate actions to vacate awards within a short period following their issuance. The parties are usually represented by legal counsel during the arbitration proceeding. Not only is the lawyer-client relationship already established, the lawyer is familiar both with the law and the facts and therefore able to counsel the client concerning the advisability of a judicial challenge, and initiate a timely legal action when appropriate.

In labor arbitration, however, the union functions as the worker's legal representative. Upon the conclusion of the proceeding, the union's responsibilities cease and it becomes a potential adversary which can hardly be expected to counsel the employee concerning his right to remedy a breach of its duty of fair representation. *See* Fox and Sonenthal, *supra*, 128 Pa. L. Rev. at 1031. The employee who may have been the victim of unlawful conduct by both his employer and union is suddenly high and dry. Although unions and employers often have relatively easy access to legal counsel, the worker does not. He must start from scratch to pursue his legal rights and he is ill-equipped to do so in just a few short days or weeks.[10]

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[10] These differences between commercial and labor arbitration may explain why a number of state arbitration statutes expressly exclude labor arbitration. *See, e.g., Badon v. General Motors, Inc.*, 679 F.2d 93, 98-99 (6th Cir. 1982) (Michigan); *McFarland v. Teamsters Local 745*, 535 F. Supp. 970 (N.D.Tex. 1982); *Engelsberg v. Transcon Freight Lines*, 530 F. Supp. 628 (D. Wash. 1982); Arizona Rev. Stat. Ann. § 12-1513; Arkansas

(Continued)

In *Hoosier Cardinal*, this Court suggested what it considered to be unduly long, and unreasonably short limitations periods for a "pure" section 301 suit by a union against an employer for alleged breach of contract.[11] The Court acknowledged that a union's section 301 suit against an employer "closely resembles an action for breach of contract cognizable at common law." 383 U.S. at 705 n. 7. However, the Court rejected Indiana's 20-year statute of limitations for written contracts in favor of its 6-year statute for oral contracts because "to the extent that a policy is manifest in the Labor Management Relations Act, it . . . suggests that relatively rapid disposition of labor disputes is a goal of federal labor law." *Id.* at 707. At the same time, the Court suggested that a 60-day statute of limitations would be unreasonably short. *Id.* at 707 n.9[12]

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10 (Continued)
Stat. Ann. § 34.522; Kansas Stat. Ann. § 5-412; Louisiana Stat. Ann. § 9:4215; Oklahoma Stat. Ann. § 812; Oregon Rev. Stat. § 33.310; General Laws of Rhode Island § 10-3-15. *See also* Maryland Code Ann. § 3-224 exempting labor arbitration unless otherwise provided by the parties in collective bargaining agreements.

[11] This action did not, of course, include a DFR claim usually found in a "hybrid" action brought by an employee.

[12] The statutes of limitation for vacating arbitration decisions range, for the most part, between 30 and 90 days. In some cases, they can be as short as only a few days. *E.g.*, Hawaii Rev. Stat. § 658.11 (10 days); Mich. Stat. Ann § 27A.5001, *et seq.*, Mich. General Court Rule 769 (20 days); Oregon Rev. Stat. § 33.310 (20 days); South Carolina Code § 15-47-40 (5 days); Alabama Code § 6-6-15 (10 days). *See also* those states whose arbitral statutes of limitation are tied to court terms: Ga. Code Ann. § 7-219; Kentucky Rev. Stat. § 417.017; Missouri Rev. Stat. § 435.120; Montana Code Ann. § 27-5-303; Neb. Rev. Stat. § 25-2114; Virginia Code Ann. § 8.01-579; West Virginia Code § 55-10-3.

Although the petitioner in this proceeding is arguing, together with the AFL-CIO, that the 6-month limitations period in section 10(b) of the National Labor Relations Act, 29 U.S.C. § 160(b), should govern employee actions against unions for breach of the duty of fair representation implied in section 9 of that statute, we see problems with that approach despite its superficial appeal.[13] It is one thing for a worker to locate the closest office of the National Labor Relations Board and file charges with the NLRB against his union or employer within 6 months. To do so costs the employee nothing; he need only complete a simple, one-page form. The filing of charges is obviously a much simpler chore than the initiation of a section 301 legal action. Indeed, the filing of NLRB charges only precipitates an investigation which may eventually lead to the NLRB's filing an administrative complaint at some later time.[14] Thus, despite federal policy favoring relatively rapid disposition of labor disputes, an employer or union that may have violated the law is not off the hook after six months if charges have been filed with the NLRB.

Were the Court to accept the petitioner's position and hold that employee actions against either just their union, or against both their union and employer

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[13] Because Del Costello's suit was filed within the section 10(b) limitations period, it is understandable that he would urge acceptance of this statute of limitations.

[14] There is no subsequent time limit imposed upon the NLRB for issuing complaints. However, according to the NLRB Forty-Fifth Annual Report for the 1980 Fiscal Year, p. 294, Table 23, the median period of time elapsed between filing of charges and issuance of complaints is 46 days. The median time between the filing of charges and issuance of final Board decisions is 484 days. *Ibid.*

must actually be filed within 6 months, employees would have to initiate contact with a lawyer substantially before the 6-month period had elapsed. And, although many of their disputes may eventually be remedied by the NLRB, the employee's lawyer would have to file a "protective" complaint in United States district court before the Board had had a chance even to investigate the matter, much less initiate its own remedial action. In addition, the employee's lawyer may often be unable to familiarize himself with the employee's claims before having to initiate an action to meet the statute of limitations. The result will be to cause the unnecessary expenditure of resources for legal services by workers, and their companies and unions, not to mention, by the judiciary.

Thus, while the 6-month limitations period under section 10(b) might otherwise appear to be the most appropriate one to apply to employee actions against their unions for breach of duty of fair representation, a somewhat lengthier period would be preferable. Accordingly, we urge the Court to hold that such actions should be governed by the limitation period governing either torts, or actions arising under statute. Typically, these statutes of limitation are for either two or three years which is sufficient to permit workers to explore the possibility of obtaining relief from the NLRB, develop evidence, secure lawyers, and obtain relief where appropriate. Should the Court wish to do so, it could specify that the shorter of these limitations periods should be adopted to promote the federal labor policy which favors the relatively rapid disposition of labor controversies. Were the Court to adopt a significantly shorter statute of limitations, it would create procedural havoc and deprive employees of a

safety valve for obtaining relief both from their unions for breach of the duty of fair representation, and from their employers for breach of contract.

CONCLUSION

For the foregoing reasons, TDU respectfully submits that this Court should reverse and remand this case with appropriate instruction concerning the nature of suits by Teamsters to vacate joint committee awards, and the nature of the cause of action by employees against their unions for breach of the duty of fair representation.

Respectfully submitted,

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